SINGLE BENCH (4)

C.S. 100/-

IN THE HIGH COURT OF JUDICATUREOF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 5182 /2005

PETITIONER : Chhat Ram Yadav s/o Setram aged 25(Twenty five) years cultivator and resident of village Bagmalla, Tahsil - Bilaigarh District Raipur (C.G.)

P.R. No. 5335/05
Presented by Shri C.R. Sahu
dated 17/10/05

VERSUS

RESPONDENTS :

1. State of Chhattisgarh through the Collector (District Election Officer), Raipur, District Raipur
2. The Sub-Divisional Officer (and specified Officer for the Panchayat Election), Bilaigarh Tahsil Bilaigafh District Raipur
3. presiding Officer Election (Polling Booth No. 220) Village Bagmalla, Tahsil - Bilaigarh District Raipur
4. Pooling Both Officer Election (Polling Booth No. 219)
5. Returning Officer Election, Bilaigarh Tahsil Bilaigarh, District Raipur
6. Bihari Patel s/o Jaitram cultivator and resident of village Bagmalla, Tahsil - Bilaigarh, District Raipur (C.G.)

RECEIVED-COPY
17/10/05
CLERK to A. G. BILASPUR

PETITION UNDER ARTICLE 226 and 227 OF THE CONSTITUTION OF INDIA FOR ISSUE OF MANDAMUS, PROHIBITION, CIRCIORARY ETC. OR ANY APPROPRIATE WRIT, DIRECTION OR ORDER.

Contd...2

XI-HC-22

(41)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP NO. 5182 सन् 2005

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	7-11-2005 Shri J.R. Verma, counsel for the petitioner. Shri Sandeep Dubey, Govt. Advocate for the State. By this petition under Article 226/227 of the Constitution of India the petitioner has questioned the legality, propriety and correctness of the order dated 8-9-2005 passed by the Specified Officer, Bilaigarh, in Election Petition No.26-A-89 (21), 2004-05 whereby learned Specified Officer dismissed the election petition filed by the petitioner herein under Section 122 of the Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short 'the Adhiniyam, 1993). Brief facts necessary for the disposal of this writ petition are that the petitioner herein along with respondent No.6 herein contested for the post of Sarpanch of Gram Panchayat Bagmalla Tehsil Bilaigarh, District Raipur. After counting respondent No.6 herein was declared elected by a margin of 2 votes. Being dissatisfied with the result, the petitioner herein filed an Election Petition under Section 122 of the Adhiniyam, 1993 in the Court of Specified Officer, Bilaigarh. Learned Specified Officer issued notices to the respondents. After recording evidence of the parties, learned Specified Officer reached to the conclusion that the petitioner herein is not able to make out a case for recount, therefore, the petition was dismissed.	

[पीछे देखिये

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned counsel for the petitioner argued that learned Returning Officer did not assign any reason on the ballot papers which were rejected and the impugned order of the Specified Officer is perverse. He ought to have summoned at least the rejected votes in order to ascertain the correctness of decision of Returning Officer regarding rejection of the votes.

Learned counsel further argued that the complaint (Annexure-P/6) along with affidavit (Annexure-P/7) was submitted to the Additional Collector. However, same was not accepted by the Additional Collector.

I have heard learned counsel for the parties.

Having heard learned counsel for the parties, I have perused the impugned order and the petition. The petitioner herein examined himself and one Muniram, and Heeralalj in order to prove the allegations in the petition. The main ground raised in the Election Petition was that at the Counting Centre No.220, at the time of counting the light went off and during that period some manipulation took place. The evidence of witness namely Heeralal is to the effect that he was agent of the petitioner in the Counting Centre No.220. The counting started at 6 pm and as after commencement of the counting there was darkness therefore, the light was installed. Thereafter, the counting took place which was conducted in his presence. The petitioner secured 102 votes whereas returning

पीछे देखिये

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

candidate Bihari secured 165 votes and 11 votes were rejected and there was no irregularity in the counting. Therefore, the petitioner's witness himself has stated that there was no irregularity in the counting.

Even if we look into the evidence of Chhatram, the petitioner herein, he himself submitted that he secured 267 votes but the Presiding Officer did not give him counting slip and the light went off in the Counting Centre No.220. He further submitted that irregularity took place when the light went off whereas, his own agent Heeralal has submitted that there was no irregularity.

Learned counsel for the petitioner further argued that Bansilal has stated that in favour of Bihari 167 votes were cast whereas, in favour of Chhatram 102 votes were cast and 10 votes were rejected. In view of this evidence, there is contradiction in the evidence of this witness and other witnesses, as such rejected votes be summoned in order to ascertain the correctness.

I fail to understand how on the evidence of this witness such a prayer can be allowed. The petitioner who has filed the Election Petition is required to raise ground in the petition for recount and thereafter he is further required to establish the same by cogent, clinching and legal evidence. Merely on the evidence of Bansilal that the petitioner received 102 votes whereas, Bihari received 167 votes, prayer of the petitioner for recount cannot be allowed. The petitioner

[illegible]

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

is required to raise and establish the ground that there was irregularity at the time of counting. Bansilal has stated that no irregularity took place at the time of counting and even as per the evidence of Chhatram it has not been explained that how the irregularity took place and there is no evidence to establish the allegations which have been raised in the petition and there is no evidence that the petitioner had moved an application for recounting of votes at the end of counting alleging irregularity in counting of votes because that was the first stage where the petitioner was required to raise the objection regarding irregularity. But, it appears from the record that the petitioner had not raised any objection at the end of counting.

Even the argument advanced by learned counsel for the petitioner that the Returning Officer had not assigned any reason for rejection of the votes, the same was not raised in the Election Petition, nor any evidence has been led to that effect, therefore, this argument is of no avail to the petitioner, same cannot be allowed at this stage for the first time.

As far as question of the complaint Annexure-P/6 is concerned, this is a memo of revision against the order of the Specified Officer dated 8-9-2005. As no revision lies against the order of the Specified Officer to the Court of Additional Collector, therefore, in the first instance if such a petition was not accepted by the

पृष्ठ देखें

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Additional Collector, then there was no irregularity committed by him. Even otherwise, when the Additional Collector refused to receive the petition. The petitioner ought to have sent the same by registered post or made a complaint to the Higher Officer regarding non-acceptance. Such petition can be typed and annexed with the petition at the time of filing of the same, therefore, in order to substantiate the allegations the petitioner ought to have filed some material showing that the same was refused by the Additional Collector.

In view of the foregoing discussion, I am of the opinion that the petitioner has not been able to make out a case to interfere with the order of the Specified Officer and for the reasons mentioned above. I am of the considered opinion that the petitioner has not been able to establish any illegality or infirmity in the impugned order. The writ petition is liable to be dismissed and the same is dismissed.

Consequently, M.(W.)P. No.4197/2005 and I.A. No.9054/2005 stand disposed of.

Sd/-
L.C. Bhadoo
Judge

Barve

SP/FS/2005 - 20,000

10/1/06 13.1.06